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The situation in Central America: procedures for the establishment of a firm and lasting peace and progress in fashioning a region of peace, freedom, democracy and development

United Nations Verification Mission in Guatemala

Note by the Secretary-General**

Summary

This is the thirteenth report on human rights of the United Nations Verification Mission in Guatemala (MINUGUA), which has been monitoring implementation of the peace agreements signed by the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca. During the reporting period, from July 2001 to June 2002, human rights compliance has deteriorated. Violations by the police have increased and impunity is the norm. The Mission found that this deterioration is closely linked to the failure to advance on other aspects of the peace agreements.

* A/57/150.

** The 2 July deadline does not apply to the present report, as the reporting period for MINUGUA is from 1 July 2001 to 30 June 2002.

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1. The attached document contains the report on human rights of the United Nations Verification Mission in Guatemala (MINUGUA) on the verification of compliance with the Comprehensive Agreement on Human Rights (A/48/928-S/1994/448, annex I). In accordance with the practice established since the Mission's inception, I shall transmit a copy of the report to the United Nations High Commissioner for Human Rights, with the request that it be brought to the attention of the members of the Commission on Human Rights.

2. The report, transmitted by the Chief of Mission, is the thirteenth on the subject and covers the period from 1 July 2001 to 30 June 2002, during which the Mission continued to verify compliance with the peace agreements signed by the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG). The findings of the verification were reported to the General Assembly on 10 July 2002 (see A/56/1003).

3. In my report to the General Assembly (A/56/391), I conveyed the request of the signatories to the peace agreements that the mandate of the Mission be extended. The mandate was renewed by the General Assembly until 31 December 2002, by resolution 56/223 of 24 December 2001. In that resolution, the Assembly reiterated to me its request to keep it fully informed.

4. I wish to express my gratitude to the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG) for their cooperation with the Mission. I should also like to thank the Member States and the United Nations system in Guatemala for the constant cooperation and support provided for the Mission and the Guatemalan peace process.

Annex

Thirteenth report on human rights of the United Nations Verification Mission in Guatemala

I. Introduction: the context in which the Mission carried out its activities

1. During the period covered by the present report, the United Nations Verification Mission in Guatemala (MINUGUA) continued to verify compliance with the Comprehensive Agreement on Human Rights (A/48/928-S/1994/448, annex I), and the human rights aspects of the Agreement on Identity and Rights of Indigenous Peoples (A/49/882-S/1995/256, annex). Since its installation, on 21 November 1994, the Mission has received 150,000 individual and group visits related to human rights and other aspects of the peace accords, and verified nearly 50,000 alleged violations of human rights.

2. The work of the Mission has evolved along with the peace process. Until the signing of the Agreement on a Firm and Lasting Peace (A/51/796-S/1997/114, annex II) in December 1996, the Mission and its roughly 250 international staff was dedicated exclusively to the verification of human rights. Subsequently, and with the same basic levels of staff and deployment around the country, the Mission has verified compliance with all of the peace agreements. Given the breadth of the commitments still pending, the parties requested that the Mission continue its activities, albeit with gradual reductions, until the end of 2003, an election year.

3. Advances in human rights registered in the early stages of the peace process gave way to a long period of stagnation. Subsequently, during the period under review, Guatemala's human rights situation actually deteriorated. MINUGUA verified cases of threats or assassinations of human rights defenders, church workers, judges, witnesses, journalists, political activists and labour unionists. Lynchings and mob violence continued. Illegal groups and clandestine structures operated with impunity. Incidents of human rights violations by the police sharply increased. Impunity remained systematic, as the State neglected its obligation to investigate crimes and sanction those responsible, while its own agents often obstructed justice.

4. Guatemala's human rights crisis goes beyond problems in the observance of civil and political rights to encompass the vast and constant violation of social, economic and cultural rights. In 1999, the parties agreed on a new timetable for implementing the outstanding commitments in the peace agreements, placing an emphasis on attacking the root causes of the conflict, such as discriminatory social policies, economic inequality and the exclusion of indigenous peoples (see A/55/389, para. 11). Three years later, however, a large number of those commitments remain unfulfilled. There has been an utter failure, moreover, to implement the recommendations of the Historical Clarification Commission (see A/53/928, annex), especially those designed to promote national reconciliation and provide compensation to victims of the armed conflict.

5. The human rights situation is being shaped by the transformation, during peacetime, of important actors from the armed conflict. The URNG demobilized and became a political party, but the military has yet to redefine its mission as contemplated in the peace agreements. The military commissioners, voluntary civil defence committees (CVDCs) and former police forces were also demobilized. However, many ex-commissioners and ex-CVDC members remain in leadership positions in their communities, and have not changed their discourse or methods, including inciting mob violence and lynchings. Many former police and soldiers were incorporated into the new National Civil Police (PNC), where they have committed abuses reminiscent of practices from the armed conflict. Former police officers and soldiers have also become owners or employees of private security firms whose ranks greatly outnumber those of PNC, and who act largely outside State control. There are indications that some former members of the counter-insurgency forces are now members of illegal groups and clandestine structures dedicated to organized crime.

6. High crime since the end of the armed conflict has made citizen security one of the public's main concerns. Studies show that Guatemala has the second highest crime rate in Central America, after El Salvador. In just the first four months of 2002, there

were 1,143 homicides, 80 per cent of them with firearms. Although a crime surge is common in post-conflict situations, this cannot be an excuse for the State's weak response. The increase in the number of police, judges and prosecutors nationwide has not produced tangible improvement and this has fed public tolerance for lynchings and "social cleansing" operations. The spread of courts and police into rural areas has not been accompanied by effective actions to attack poverty, discrimination and other structural causes of crime.

7. Contrary to the spirit of the peace agreements, there was an expansion in the role of the Army in public security and other spheres of government action. In November 2001, the President of the Republic named the Defence Minister, then a general on active duty, to head the Ministry of the Interior, in charge of PNC. Military and former military officers were later appointed to key positions in the Ministry of the Interior, the National Security Commission, the prison system, the civil aviation authority and the tourism institute. Several were subsequently dismissed just prior to the Consultative Group meeting held in February 2002. In another sign of militarization, regional police chiefs were ordered to share their daily reports with regional Army commanders. The Government also placed tasks, such as the distribution of food rations, school supplies and subsidized fertilizer, in military hands. Repeated financial transfers into the Army's budget contrasted with cutbacks in Government social budgets, justice administration and compensation to victims of the conflict, in flagrant violation of the peace agreements. During 2001, the Army spent close to double the amount approved by Congress, nearly reaching the level spent in 1995, when the armed conflict was still in progress.

8. With general elections approaching in 2003, the political context was polarized, marked by sharp debates on tax policy, highly critical press coverage of the Government, accusations of corruption at all levels, amid presidential claims of plots to destabilize the Government. Initial national and international efforts to ease the climate of confrontation were unsuccessful. Land and labour disputes and other social conflicts intensified, amid an agrarian crisis worsened by the collapse of world coffee prices and a shortage of funds for social policies.

9. The meeting of the Consultative Group in Washington, D.C. laid the basis for renewed progress in implementing the peace agreements. Following an encouraging dialogue among the Government, civil society and the international community, the principal donor countries renewed their commitments, while linking them to progress on the peace agenda, including human rights and fighting corruption. The Government pledged to accelerate implementation of the peace agreements, as well as to battle impunity, improve citizen security and guarantee respect for human rights. The mood of optimism was dampened shortly after the meeting, however, by the three-day abduction of the president of the Central Bank and the killing of a witness in a sensitive case involving the use of the National Printing Office for political purposes. The upsurge in threats and violence against human rights workers, including the killing of a staff member of the Rigoberta Menchú Foundation, sparked public outcry and calls for a State crackdown against illegal groups and clandestine structures considered possible suspects.

10. At the Government's request, and in response to the deteriorating human rights situation, the Special Representative of the Secretary-General on Human Rights Defenders visited Guatemala in May 2002. The election of a new Public Prosecutor and a new Human Rights Counsel were seen as opportunities to improve the work of these institutions on behalf of human rights.

11. In June 2002, former CVDC members staged mass protests in the department of Petén to demand indemnification for their services during the armed conflict as an auxiliary force directed by the Army. The Government indicated that it was seeking funds to meet their demands, prompting criticism that doing so would be tantamount to rewarding people for committing human rights abuses during the conflict. Meanwhile, the national compensation plan for victims of human rights violations during the armed conflict, a central recommendation of the Historical Clarification Commission, had still not been created and pilot projects were stalled for lack of funds.

II. Analysis of the commitments made in the Comprehensive Agreement on Human Rights

Commitment 1
General commitment to human rights

12. During the period under review, MINUGUA admitted 371 new cases comprising 3,213 alleged violations of the human rights accorded priority in the Comprehensive Agreement. As a result of its verification, the Mission corroborated 5,845 violations committed during this or previous periods (see appendix).

Right to life

13. Since the signing of the peace, criminal violence has become the main threat to the right to life. The public's main demand is for the State to fulfil its obligation to provide public security. Nevertheless, grave human rights violations by State agents continue. The Mission received complaints of 89 alleged violations during the period, corroborating 13 extrajudicial executions and 25 attempts. Six violations reported in other periods were also corroborated.

14. The excessive use of force by PNC members resulted in some extrajudicial executions; some detainees were shot while in custody. An example was the death of Otoniel Ramos Suchite, on 17 October 2001, in Quebrada de Agua, Zacapa. A group of about 50 police from La Unión, Gualán and Zacapa were sent to arrest Ramos Suchite on homicide and robbery charges. Witnesses say the police shot him as he emerged unarmed from inside his home.

15. On 29 January 2002, in the village of Chocón, Izabal, members of the police's Department of Anti-Narcotics Operations fired at a group of people, killing two. The police initially claimed that the dead men, Abinail Cerna Castañeda and Leonel Arnoldo Díaz Valenzuela, were drug traffickers who had put up resistance. However, the Office of Professional Responsibility of PNC has handed over 17 officers from that Department to face justice in the case.

16. Several assassinations drew heavy media attention and public debate. César Augusto Rodas Furlán, a witness in the so-called National Printing Office case was assassinated in February 2002. Jorge Alberto Rosal Zea, a member of the Partido Patriota political party was killed in March 2002. Guillermo Ovalle de León, a staff member of the Rigoberta Menchú Foundation was shot dead in April 2002. The killings followed the slaying of journalist Jorge Mynor Alegría Armendariz in September 2001, and justice of the peace Miguel Geovanni Avila Vásquez, in January 2002 (see paras. 29 and 43).

17. The Mission registered 57 cases of lynchings and attempted lynchings against 139 people, 21 of whom died, including minors. In some cases, authorities failed to prevent the lynchings; in others they took part. Municipal authorities, ex-CVDC members and ex-military commissioners frequently planned and instigated the attacks. In one case, two men and a minor, José Ical Xip, Juan Cuc and René Alfredo Cho, were lynched on 20 October 2001 in Matanzas, Baja Verapaz. They were killed after being accused of robbery before a crowd of 3,000 people led by auxiliary mayors, heads of civic committees and individuals claiming leadership for having recently completed their obligatory military service.

18. The lynchings, most of which remain in total impunity, have occurred mainly in poor provinces where the armed conflict was most intense: Quiché, Alta Verapaz, Huehetenango, San Marcos, Petén, Totonicapán, Baja Verapaz. Some cases recall the violent counter-insurgency practices described by the Historical Clarification Commission in its report. On 8 February 2001, for example, villagers in Sayaxche, Petén responded to news of a robbery by organizing themselves into patrols, capturing a man and two boys, and then torturing and fatally shooting them.

19. Since the death penalty was reapplied in 1996 after years of inactivity, 87 people have been sentenced to death and five executed. There were no new executions during the period under review, but 10 people were sentenced to death. The majority of the cases have legal problems serious enough to justify a moratorium leading to abolition. The Government, however, has not followed through on the pledge made by President Portillo to seek a moratorium. Among the violations of international standards in its application in Guatemala, the death penalty is obligatory for certain crimes, is imposed other than for only the most serious of crimes and, in murder cases, is applied more often when the prisoner is considered dangerous. There is confusion about which of the authorities can receive appeals for stays of execution. The death penalty has also been applied in public, and before appeals have

been exhausted in the Inter-American human rights system. The death penalty violates the American Convention on Human Rights, to which Guatemala is a party.

Right to integrity of person

20. Verified cases of cruel, inhuman and degrading treatment by the police increased by 128 per cent during the period under review. The Mission received complaints of 551 alleged violations, of which it corroborated 270, the majority of them committed by members of PNC. Confirmed cases of torture declined during the same period by 57 per cent.

21. Effective internal controls and policies for purging PNC of abusive members are still needed. Notwithstanding advances in this regard by the Office of Professional Responsibility of PNC, its investigations are often given little weight within the judiciary. Weak training courses are also partly to blame for the ongoing pattern of abuse.

22. More than 70 per cent of the admitted complaints of torture and cruel, inhuman or degrading treatment occurred in the departments of Petén, Guatemala and Cobán. In one case, Luis Méndez, a construction worker from Belize, was severely beaten on four occasions by police in Petén. Méndez had to have his spleen removed as a result of the beatings, during which his nose was also fractured; he was threatened with death and had a pistol shoved into his mouth. The Office of the Public Prosecutor opened an investigation, but the police in Petén falsified reports to protect those responsible. The officers who took part in the beatings remain on active duty.

Right to liberty and security of person

23. Complaints of threats, intimidation and harassment and a lack of serious investigations or punishment of those responsible continued in the period under review. The number of complaints received nearly doubled, to 938, and MINUGUA corroborated 430 violations. The climate of intimidation was reflected in the fact that two thirds of the cases involved threats, including death threats. The cases, which included threats against human rights activists, journalists, judicial officials, clergy and union leaders, are detailed elsewhere in the present report. Threatened, witnesses and persons who exposed the National Printing Office case also fled the country.

Right to freedom of association and assembly

24. Although threats and other acts of intimidation had a negative impact, the Mission is encouraged by an organizing initiative resulting in the creation of a new coalition of non-governmental organizations, the Human Rights Movement, as well as the decision to form a National Council of Indigenous Peoples.

25. The Mission received new complaints of threats against labour leaders and reports of harassment and break-ins at union headquarters. The Mission verified anti-labour practices within the office of the Comptroller General, who spoke openly about his intention to dismantle the two unions within the institution; these unions have lost 500 workers since 1999.

26. Labour leaders continue to be threatened and intimidated. For example, Juan Fidel Pacheco Coc, Secretary-General of the Immigration Workers' union, reported receiving death threats. The Labour Union of Guatemalan Workers (Unión Sindical de Trabajadores de Guatemala) labour federation complained of telephone threats, as well as surveillance of its headquarters and some members. On 15 April 2002, motorcycle gunmen fired at the home of Carlos Guzmán Ganuz, Secretary-General of the Union of Municipal Workers of Nueva Concepción (Sindicato de Trabajadores Municipales de Nueva Concepción), Escuintla.

27. Reforms to the Labour Code effective 1 June 2001 signify progress in bringing Guatemalan legislation in line with International Labour Organization Conventions Nos. 87 and 98, concerning freedom of association and the right to organize and to bargain collectively. Nevertheless, the Ministry of Labour has recognized that serious obstacles to the enjoyment of labour rights persist.

Right to freedom of expression

28. Some journalists were victims of violence, threats and intimidation during the period. Nevertheless, newspapers and other communication media freely and vociferously criticized the Government and exposed corruption scandals.

29. The most serious case was the killing, on 5 September 2001, of Jorge Mynor Alegría Armendariz, director of a programme on Radio Amatique in Puerto Barrios, Izabal. The victim had denounced corruption

by provincial authorities and the mayor of Puerto Barrios. Enrique Aceituno, the director of a news programme at the same station, also critical of corruption, resigned after receiving threats.

30. Freelance journalist David Herrera was forced into a vehicle by unknown individuals in Guatemala City on 10 April 2002, and told that he would be killed if he did not turn over reporting materials on exhumations of clandestine cemeteries. Herrera managed to escape and flee the country. On 20 September 2001, Silvia Gereda, Editor-in-Chief of the newspaper *El Periódico*, was pursued by unknown men in a car.

31. Congress approved the Law on Mandatory Professional Membership in November 2001, prompting some concerns that it was an attempt to restrict journalists' freedom of expression. However, the Constitutional Court ruled provisionally that there was no requirement of professional membership in order to exercise freedom of expression. Concerns about censorship also arose over reforms to article 196 of the Penal Code relating to publications and obscene spectacles, as well as a requirement that public exhibitions must be previously approved by the Ministry of Culture.

Political rights

32. Congress named new magistrates to the Supreme Electoral Tribunal, responsible for supervising general elections in 2003. The protection of political rights was considered a priority by the parties in the Comprehensive Agreement, and reform of the Elections and Political Parties Law was contemplated in the Agreement on Constitutional Reforms and the Electoral System.

33. During the period under review, Congress approved reforms to the Electoral and Political Parties Law that were returned by the Constitutional Court with objections. Congress should give rapid attention to approving the law so that the new electoral regime is in place well ahead of the 2003 election. The Mission believes that the reforms contain provisions which adequately address the peace agreements' goal of reducing abstention and broadening citizen participation in elections. Reforms related to documentation, voter registration, decentralizing voting centres and civic education campaigns will require a special effort by the Supreme Electoral Tribunal.

Agreement on Identity and Rights of Indigenous Peoples: cases of discrimination

34. During the period under review, the Mission received complaints of discrimination and due process violations, such as obstruction of justice and the failure to provide access to justice in indigenous languages.

35. In one example of discrimination, Government forest rangers illegally and arbitrarily detained two men from the K'iqhe' ethnic group, Pedro Beto Ixcoy and Victor Coxaj Chanchava Guerra, in Sololá on 10 December 2001. The men had extracted a natural substance used in Mayan ceremonies from a species of pine tree protected by conservation laws. Serious violations of due process were also verified in the case.

36. On 27 December 2001, two women from the Q'anjobal ethnic group were sexually harassed by the judge from the Centre for the Administration of Justice in Santa Eulalia, Huehetenango. Although the women lodged a complaint with the police, in which they named the alleged perpetrator, the Office of the Public Prosecutor refused to investigate, arguing that the victims had not identified the aggressor. There was no serious investigation by the judicial disciplinary board.

37. In June 2002, Irma Alicia Velásquez Nimatuj, a Mayan professional, was denied entry to a restaurant in Guatemala City because she was wearing typical indigenous dress. The case drew broad public attention and debate in the media, as well as an unusual public apology from the restaurant owners. The incident highlighted racist attitudes and the need for legislation making ethnic discrimination a crime.

38. In another illustrative case, members of the Town Council of Totonicapán carried out a slander campaign against traditional indigenous authorities in the town and attempted to nullify elections for the position of indigenous mayor.

Commitment to promote rules and mechanisms for the protection of human rights

39. Important treaties relating to human rights were ratified during the period: the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities; the Convention on the Civil Aspects of International Child Abduction; the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; the Optional Protocol to the

Convention on the Rights of the Child on the sale of children, child prostitution and child pornography; and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

40. The State's willingness to use and subject itself to mechanisms contemplated in international instruments, such as the American Convention on Human Rights, has permitted compensatory measures in cases submitted to the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights. The Presidential Commission on Human Rights (COPREDEH) reported that, during the period under review, the State granted economic compensation in three cases submitted to the friendly settlement procedures before the Commission, and that in two more cases, the Court ordered that indemnities be paid.

41. The Constitutional Court took a positive step in declaring unconstitutional the law that indefinitely delayed entry into force of the Children's and Youth Code, while ordering Congress to set a date for its entry into force. A draft law exists under which the law protecting children's rights would enter into force in December 2003. The Constitutional Court also ruled that the Statute of the International Criminal Court is compatible with the Constitution of Guatemala. The Government sent the Statute to the Congress for approval.

42. The "Policy of the Executive on Human Rights", presented in late 2001 by COPREDEH has yet to be made operational through tangible, concerted actions which have the support of other branches of State and civil society.

Commitment II
Commitment to strengthening institutions for the protection of human rights

43. Attacks and intimidation against judicial officials continued during the period. Miguel Geovanni Avila Vásquez, justice of the peace in Gualán, Zacapa, was assassinated in January 2002 (see para. 16). This follows the killing, last year, of justice of the peace Alvaro Hugo Martinez of Senahú, Alta Verapaz (see A/56/273, annex, para. 43). Three people were scheduled for trial in the latter case in July 2002, but ten other suspects have eluded arrest. On 9 April 2002 the mayor and a mob of supporters threatened the judge of the Criminal Court of First Instance in Cuilapa, Santa Rosa in connection with cases in the court. Several prosecutors in high-profile cases also reported threats. In May 2002, the headquarters of the Institute for Public Penal Defence was ransacked by unknown individuals.

44. Although the Supreme Court created a Judicial Security Unit, budget cuts for the judicial branch limited its possibilities. The caseload of the office of the special prosecutor for threats and intimidation against judges, prosecutors and lawyers increased to more than 150 during the first half of 2002. Only one case, however, led to a conviction.

45. Budget shortfalls continued to hamper the justice system. A 12-per-cent budget cut and delays in the delivery of funds to the judiciary prompted public tension between this branch and Congress, which refused to approve a supplemental increase. A bipartite commission of the judiciary and the Finance Ministry was created to address the problem. Congress also rejected a budget increase for the Office of the Special Prosecutor, but the President of the Republic announced his intention to partially make up the shortfall.

46. In March 2002, the Special Rapporteur of the United Nations Commission on Human Rights on the independence of judges and lawyers, Dato' Param Cumaraswamy, recommended that Guatemala increase its budget for the protection of judges, lawyers and prosecutors, provide more resources to the special prosecutor entrusted with investigating threats, improve the training for security personnel detailed to the Supreme Court, provide life insurance to judges, and strengthen the witness protection programme (see E/CN.4/2002/72/Add.2, para. 92).

47. A new Human Rights Counsel and Public Prosecutor were elected during the period under review, following participatory processes with broad input from civil society, which considered the ethics and professional qualifications of the candidates. The challenge for the new Public Prosecutor is to increase the efficiency and autonomy of the Public Ministry, the poor performance of which has contributed to impunity. The new Human Rights Counsel has created high expectations about overcoming the weaknesses of his office.

Commitment III
Commitment against impunity

48. The largest number of confirmed human rights violations since the end of the armed conflict are violations of due process, especially the State's obligation to prevent crimes, investigate and punish those responsible. During the period under review, the Mission received complaints encompassing 723 alleged violations and corroborated 4,719 violations denounced in this and previous periods.

49. The Office of the Public Prosecutor bears the greatest responsibility for the increase in these kinds of violations, followed by the Judiciary and PNC. The case of the Dos Erres massacre, in which 189 people, including women and children, were killed by Army members in the department of Petén in 1982, is emblematic of the problem. The Government has taken positive steps to provide compensation to the victims' families through the friendly settlement procedures of the Inter-American Commission on Human Rights. However, despite the Government's pledges to cooperate, the criminal process against the Army members charged has not advanced since it began in 1994 (see A/55/174, annex, para. 62). A decision is still pending on whether the National Reconciliation Law shields the soldiers from prosecution.

50. The right to justice remains precarious in Guatemala. Advances seen in high-impact cases, such as the assassination of anthropologist Myrna Mack and Monsignor Juan José Gerardi have come at an enormous risk to the civilians and officials participating in the trials. Judicial processes are permanently delayed by dilatory appeals. An example is in the case of Xamán, in which soldiers killed 11 members of a returned refugee community in October 1995, and wounded 30 others. The Army, through interventions by lawyers with no formal connection to the military, has systematically obstructed justice.

Commitment IV
Commitment that there are no illegal security forces and clandestine structures; regulation of the bearing of arms

51. Central actors from the armed conflict have undergone transformations since the signing of the peace agreements. Many former CVDC members and former Military Commissioners have preserved leadership roles in municipal governments, development councils, local security councils, or as auxiliary mayors in the communities where they committed serious crimes during the conflict. They often exercise leadership in authoritarian ways, using intimidation to resolve disputes in their favour, and preying on fears that they could resort to violence, as in the past. These practices and their continuing participation in "social intelligence" activities of the Army's Division for Civilian Affairs seem to suggest ongoing ties to the military and the need for further change.

52. Clandestine structures and illegal groups used in the counter-insurgency effort during the conflict have also undergone a transformation. Judicial processes have not affected these structures or their members. Commitments in the peace agreements that would give the State mechanisms to control them, such as strengthening police and judicial investigative capacities, civilian intelligence and congressional controls over intelligence agencies, have not been implemented. Shielded by impunity, these structures have regrouped and are pursuing illegal business interests and political influence. With the State no longer committing human rights abuses as a matter of policy, these groups' relations to the Government apparatus are diffuse, although they still hold some key positions and maintain informal links to police, justice officials and military intelligence.

53. Government officials at the highest levels have drawn public attention to the existence of such clandestine structures. In November 2001, the President of the Republic declared that clandestine networks and mafias were embedded in the Ministry of Interior and other parts of the State. During the Consultative Group meeting, the President acknowledged the penetration of the State by corrupt interests. In May 2002, the presidency's Strategic Analysis Secretariat made public its working documents for establishing a Government policy to combat those structures. The new Public Prosecutor has complained of organized crime structures within his office.

54. The Mission receives information about these groups from a wide range of sources, but their clandestine nature makes verification difficult. It is the State's responsibility to carry out investigations and

dismantle them. Nonetheless, the Mission found evidence of one clandestine network of civilian and military officials assigned officially or unofficially to parts of the executive and judicial branch. The Office of the Public Prosecutor is investigating cases in which this network, using sophisticated methods from within intelligence agencies, allegedly diverted funds from the bank accounts of public institutions, including some holding foreign aid.

55. A shoot-out in Guatemala City in February 2002 between members of PNC and the Army left two Army members dead and three police wounded, while exposing clandestine criminal activities. The dead Army members and one of the police, an attaché to the Intelligence Directorate of the Army Chief of Staff, were reportedly part of a clandestine group which, at the time of the shoot-out, was allegedly attempting to steal ransom money being paid for a kidnapping victim. Official sources claimed publicly that the incident was a coordination mishap during a joint police-military operation. There are indications that police reports were altered under orders from superiors as part of a cover-up. MINUGUA received information that one of the Army members, Lucian Ordoñez Reyes, was wounded during the shoot-out and later killed after surrendering to police. Two Army officers linked to the clandestine group were sent abroad. Under orders from the Ministry of Defence, illegal weapons used by soldiers in the shoot-out were later registered as legal weapons by the Government Arms and Munitions Control Department (DECAM).

56. It appears that parallel networks inside the prison system facilitated the mass escape of 78 inmates from the maximum-security prison in Escuintla in June 2001 (see A/56/273, annex, para. 52). The Office of the Public Prosecutor should investigate the role of prisoners Iboy Ramirez and Solis Mejicanos in preparing the escape, and their connections to parallel structures within PNC and intelligence agencies. There were reports that the death of these two prisoners in August 2001 was not the result of a confrontation between rival gangs, as the police have indicated.

57. Experts estimate that at least 1.5 million firearms are circulating in Guatemala, many illegally, constituting a major factor behind the country's high homicide rates. DECAM has only 181,051 firearms registered. The same agency reported the sale of more than 33 million munitions during 2001, a more than 50 per cent increase over the previous year. Key items in the peace agreements related to the control of firearms have not been implemented, nor has a new arms and ammunitions law been approved by Congress.

Commitment V
Safeguards and protection for individuals and entities working for the protection of human rights

58. Complaints of threats, intimidation and violence against human rights activists increased, and drew public attention to the possible involvement of clandestine groups. It was in this context that the Special Representative of the Secretary-General of the United Nations on Human Rights Defenders, Hina Jilani, visited the country between 26 May and 2 June 2002. Her presence underscored the international community's concern for the safety of human rights defenders and the need for stronger Government measures to protect them.

59. The shooting death on 29 April 2002 of Guillermo Ovalle, a staff member of the Rigoberta Menchú Foundation, was a matter of especially grave concern. Although two men with criminal backgrounds were charged as the perpetrators, the Mission has urged that the ongoing investigation consider possible political motives in the killing. Threats against forensic anthropological teams involved in exhumations of mass graves also drew heavy public concern and expressions of sympathy from the international community.

60. The Mission verified complaints of threats and harassment, including menacing telephone calls, phone taps, surveillance of organizations and their members, and robberies appearing on the surface to be common crimes. Among the individuals threatened were Matilde González of the Association for the Advance of Social Sciences and Bishop Alvaro Ramazzini of San Marcos. Threats were also received by the news agency Centro Exterior de Reportes Informativos sobre Guatemala (CERIGUA), the Pro-Justice Movement, the Myrna Mack Foundation, the Institute for Comparative Studies in Penal Sciences, the National Coordination of Widows of Guatemala, Coordination for Economic, Social and Cultural Rights, the Alliance Against Impunity, the Centre for Legal Action in Human Rights, the Association of Family Members of Detained and Disappeared People of Guatemala, the Human Rights Office of the Archbishop of Guatemala

and the Coordination of Mayan Peoples of Guatemala. Forensic teams from the Guatemalan Foundation for Forensic Anthropology, the Centre for Forensic Analysis and Applied Sciences and the Anthropological Forensic Teams were also threatened. The parish house of the diocese of Nebaj was intentionally burned to the ground; diocese staff had participated in human rights investigations.

61. Death threats delivered in three separate letters to 11 forensic anthropologists, seven well-known human rights defenders and journalists and five members of the clergy were particularly worrisome because they were signed in the name of clandestine groups. Furthermore, the victims were attacked in ideological terms similar to those used to justify human rights violations during the armed conflict.

62. Although police protection was increased for threatened human rights defenders, the State has not lived up to its principal responsibility to investigate and punish those behind the threats and intimidating acts. The problem has been raised in recent months with officials at the highest levels. The Security and Human Rights Cabinet, composed of the Vice-President of the Republic, the Ministers of the Interior and for Foreign Relations, the Public Prosecutor and other top officials, met with representatives of human rights organizations. After continuing threats, however, the human rights organizations criticized the lack of a specific and effective response. In May 2002, the new Public Prosecutor named a special prosecutor to investigate violations against human rights defenders.

III. Conclusions and recommendations

63. During the year under review, the human rights situation in Guatemala deteriorated. The climate of intimidation worsened amid threats and the assassination of judges, journalists and human rights defenders. Illegal groups and clandestine structures continued their operations. Lynchings occurred and impunity was widespread. The State failed in its duty to investigate crimes and punish those responsible. State agents acted to obstruct justice. There was also a notable increase in human rights abuses by members of the National Civil Police.

64. The deteriorating human rights situation is closely linked to the failure to advance on other aspects of the peace agreements. More than five years after the signing of the peace agreements, Guatemala's panorama of ethnic discrimination and profound social and economic inequalities persists. The State's lack of political will and weak institutional response have defrauded Guatemalans' expectations that the peace process would bring tangible improvement in their lives beyond the cessation of the conflict.

65. The Government has not taken decisive action towards strengthening civilian power and demilitarizing Guatemalan society, as envisioned in the peace agreements. This can be seen, for example, in the roles assigned to the Army in contradiction to the peace agreements; the expansion of the Army's budget beyond established limits; maintenance of the same field structure employed by the Army during the internal conflict; the Army's intervention in public security operations in non-exceptional circumstances; and the designation of military officers and former military members to key positions in public administration.

66. The Government has a grave responsibility to confront and dismantle illegal groups and clandestine structures, which are in part an unresolved legacy of the conflict and its former counter-insurgency apparatus. Although these groups act with relative autonomy, have an ambiguous relationship to the Government and are not part of a State policy, they have become a serious obstacle to the peace process, democracy and the observance of human rights. These illegal groups are also a menace to people and institutions pursuing judicial processes which threaten their interests. At minimum, confronting these groups will require a strengthened criminal investigative capacity and the creation of civilian intelligence bodies envisioned in the peace agreements.

67. In order for the peace process, justice and reconciliation to advance, stronger actions are needed to protect human rights defenders, justice officials, witnesses, journalists, union leaders and clergy. An important first step for combating the fear generated by threats and aggressions would be to carry out serious investigations into the most emblematic of the cases and punish those responsible.

68. The Government should fulfil its commitments to combat impunity and strengthen the institutions that protect human rights and battle corruption. These are key commitments of the peace process and central demands of the Guatemalan people. Impunity has

discredited the institutions that fight crime, and erodes public confidence in the justice system. Key institutions, including the judicial branch, the Office of the Public Prosecutor and the National Civil Police, are short of funds. Legal reforms must be accompanied by policies to shield officials from political influences, corruption, pressures and threats. Institutions which guarantee the rule of law and offer human rights protection must be purged of all those deemed unfit to serve. The new Public Prosecutor faces an important challenge to make his office, which is one of the principal sources of impunity, more autonomous and efficient.

69. The Mission welcomes the ratification of several international human rights treaties during the period under review, and recommends that other steps in the same direction be taken. These include: recognizing the competence of the Committee against Torture and the Committee on the Elimination of Racial Discrimination to receive individual complaints; ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights and the Second Optional Protocol to the American Convention on Human Rights, both regarding abolition of the death penalty; ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Rome Statute of the International Criminal Court. An urgent outstanding task for the Government is to advance on a national action plan for human rights, in close consultation with civil society.

70. The human rights framework would be strengthened by the approval of additional legislation contemplated in the peace agreements. Important steps were taken through reforms to the Labour Code, the Law on Decentralization, the Municipal Code and the Law on Urban and Rural Development Councils. Still on the unfinished agenda are: reforms to the Penal Code establishing ethnic discrimination and sexual harassment as crimes; the Arms and Munitions Law, laws regulating private security firms and the penitentiary system; and a law creating the Commission for Peace and Harmony recommended by the Historical Clarification Commission. Speedy approval of reforms to the Electoral and Political Parties Law would help ensure that political rights are respected in the 2003 elections, particularly through increased participation by the rural poor, indigenous people and women.

71. Given the grave flaws in death penalty convictions, the Mission recommends that the Government declare a moratorium on its application, commute outstanding sentences and eventually abolish the practice. The Government should request a consultative opinion from the Inter-American Court of Human Rights on the compatibility of death sentences for non-fatal kidnapping cases with the American Convention on Human Rights. Guatemala should reduce the number of crimes for which this penalty is established, especially within the military justice system, and clarify the legal framework for stays of execution.

72. Consolidating advances in the peace process, progressing on its unfinished agenda and ensuring its durability are monumental challenges for the Guatemalan State and civil society. In the Consultative Group meeting held in February 2002, the international community and the United Nations system renewed its commitment to accompany and support Guatemala towards these objectives. The Mission, as it approaches the completion of its mandate, will make priority use of its resources to help civil society, peace institutions and the Office of the Human Rights Counsel become stronger and more effective.

Appendix

Statistics on human rights violations dur²ng the period from 1 July 2001 to 30 June 2002

		Reported in the period under review				*Reported in earlier reports*		
	Total cases	*Complaints admitted*	*Violations alleged*	*Violations verified*	*Violations confirmed*	*Violations verified*	*Violations confirmed*	*Total confirmed in the period under review*
Right to life		34	89	48	38	17	6	44
Right to integrity of person		118	551	326	255	18	15	270
Right to liberty and security of person		209	938	573	272	211	158	430
Right to due process		241	723	450	431	4 330	4 288	4 719
Political rights		10	28	23	23	1	0	23
Right to freedom of expression		11	14	8	2	46	43	44
Right to freedom of association and assembly		19	818	266	9	580	261	270
Right to freedom of movement and residence		5	52	45	45	1	0	45
Total	**371**	**647**	**3 213**	**1 739**	**1 075**	**5 204**	**4 771**	**5 845**